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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

ELI LILLY AND COMPANY, et al.,

Defendants.

2:23-cv-01929-SPG-SK

**APPENDIX COLLECTING THE
PEOPLE'S DISCLAIMER STATEMENTS
IN PRIOR MOTION TO REMAND**

Judge: Hon. Sherilyn Peace Garnett
Courtroom: 5C

People's Notice of Motion and Motion to Remand (ECF 78)

- 2:17-2:20: “[I]n order to clarify any confusion on the part of Express Scripts or Caremark, the People specifically waived [in the Complaint] any relief against Express Scripts or Caremark relating to or arising out of TRICARE and FEHBA plans and reaffirm that waiver in this Motion.”

People's Memorandum in Support of Motion to Remand (ECF 78-1)

- 1:18-1:20: “The Complaint expressly disavows any inclusion of federal insurance plans such as TRICARE and otherwise raises no federal issues.”
- 1:21-1:27: “Express Scripts and Caremark removed the action, invoking the federal officer removal statute, 28 U.S.C. § 1442, because they assist the federal government with providing health insurance to uniformed military personnel, veterans, federal employees, and their families. . . . The Complaint does not challenge how the federal government provides those federal health benefits.”
- 3:8-3:12: “The Complaint does not challenge the Department of Defense’s (DoD) operation of TRICARE, which provides civilian healthcare to certain persons associated with the military. Nor does the Complaint challenge the federal Office of Personnel Management’s (OPM) operation of the Federal Employee Health Benefits Act (FEHBA) program, which provides healthcare to federal employees.”
- 9:2-9:4: “[T]he Complaint is not challenging, or seeking recovery as a result of, Express Scripts’ conduct regarding the TRICARE program.”
- 9:16: “The Complaint does not challenge any conduct related to TRICARE.”
- 10:1-10:3: “The Complaint simply does not challenge how the federal government sets its TRICARE formularies and associated co-pays. Nor does it challenge Express Scripts’ collection of those co-pays.”

- 1 • 10:24-10:25: “The Complaint does not challenge *any* DoD activities and the
- 2 People waive any such challenge here.” (Emphasis in original).
- 3 • 10:26: “DoD activities are not at issue in this action[.]”
- 4 • 11:10-11:11: “[T]he People do not challenge conduct related to TRICARE
- 5 and FEHBA programs.”
- 6 • 11:14-11:18: “The People are not asserting claims related to FEHBA or
- 7 TRICARE against *either* PBMs *or* Manufacturers. . . . And the People
- 8 disclaim any such assertions here.” (Emphasis in original).
- 9 • 14:22-14:23: “[T]he People’s action is not challenging Caremark’s actions
- 10 for FEHBA programs[.]”
- 11 • 17:18-17:19: “[T]he People do not seek to recover TRICARE beneficiaries’
- 12 copays for insulin.”
- 13 • 18:18-18:19: “[T]he People are not challenging Caremark’s conduct with
- 14 respect to FEHBA plans.”
- 15 • 20:27-20:28: “[T]he theory of the People’s suit simply does not challenge the
- 16 DoD or OPM’s actions[.]”
- 17

18 **People’s Reply Brief in Support of Remand (ECF 98)**

- 19 • 4:8-4:9: “The disclaimer means joint liability is not being asserted against
- 20 Express Scripts related to TRICARE.”
- 21 • 5:11-5:12: “There is nothing in the Complaint challenging Express Scripts’
- 22 DoD conduct.”
- 23 • 11:14-11:15: “Caremark’s FEHBA rebate conduct is disclaimed[.]”
- 24 • 11:28: “[T]he Complaint is not asserting claims against Caremark related to
- 25 any FEHBA plan.”
- 26 • 15:22-15:23: “The People are not challenging Express Scripts’ TRICARE or
- 27 Caremark’s FEHBA plan activities.”
- 28

Transcript from Hearing on Motion to Remand (ECF 125)

- 8:4-9:1 (paragraph breaks omitted): “The COURT: . . . So what’s the relief that you are seeking, and how does that not relate to the relationship that the various defendants have with the Federal Government or officer?
MS. TILLEY: [sic] So people in the United States have insurance or don’t have insurance through various entities. So, for instance, somebody could be uninsured. We are seeking relief on somebody who is -- for people who are uninsured. The conduct that related to Caremark’s work for FEHBA or Express Scripts work for TRICARE do not relate to insured individuals. If, for instance, a person has health insurance through their private employer, again, we are seeking relief for such persons, for instance, if they have a high deductible health plan and they are paying in their deductible phase the full cash price of insulin, we are seeking relief on behalf of such individuals. If an individual has insurance directly, so they are not going through their employer, we are seeking relief on behalf of such individuals. That person does not have health insurance through TRICARE or health insurance through FEHBA. We are also seeking relief on persons on Medicare as pled in our Complaint. Such people, again, do not have health insurance through TRICARE or FEHBA.”
- 10:13-10:18: “MS. TILLEY: [sic] . . . We believe our Complaint is not an artful disclaimer. We were clear that we were disclaiming FEHBA and TRICARE. But even if that was not the case, we’ve been clear about it in our briefs. I think everybody here understands that we are disclaiming FEHBA and TRICARE.”
- 12:25-13:1: “MS. TILLEY: [sic] . . . We are disclaiming FEHBA and TRICARE.”
- 34:25: “MS. TILLEY: [sic] . . . To be clear, we’ve disclaimed TRICARE and FEHBA.”

- 1 • 35:3-35:6: “MS. TILLEY: [sic] . . . TRICARE and FEHBA are disclaimed.
2 We were trying to be clear about that in the Complaint. We tried to be clear
3 about that in the briefing. We are clear about that now. They are disclaimed.”
- 4 • 35:10-35:12: “MS. TILLEY: [sic] . . . We are not seeking relief from
5 manufacturers. We are not seeking relief from PBMs related to TRICARE or
6 FEHBA.”
- 7 • 35:25: “MS. TILLEY: [sic] . . . We are not suing over TRICARE and
8 FEHBA.”
- 9 • 36:11-36:12: “MS. TILLEY: [sic] . . . We are stating again we are not
10 seeking penalties as to TRICARE conduct.”

11
12 Dated: September 18, 2024

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